SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-203
District Docket No. XIV-2012-0105E

IN THE MATTER OF	
EVERETTE L. SCOTT, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: September 14, 2017

Decided: December 28, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction in the United States District Court for the Southern District of New York (SDNY) of one count of securities fraud (15 U.S.C. §78ff and §78j(b)), and two counts of wire fraud (18 U.S.C. §1343), after respondent and a former client stole in excess of five million dollars in two fraudulent schemes. The OAE urged us to

recommend respondent's disbarment. Respondent argued that he should receive only a three-year, retroactive suspension. We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2007. He has no prior discipline. On February 13, 2013, he was temporarily suspended in connection with this matter. In re Scott, 213 N.J. 43 (2013). He remains suspended to date.

Respondent and Tyrone L. Gilliams, Jr. each were charged in a January 2, 2013 second superseding indictment with one count of securities fraud and two counts of wire fraud. They misappropriated in excess of $5,000,000 from investors in two fraudulent schemes.

I. The Wire Fraud

Count three of the second superseding indictment charged that, from 2009 to 2010, respondent served as general counsel to Gilliams' company, TL Gilliams, LLC, a purported commodities trading company. In October 2009, Gilliams and respondent negotiated an agreement with Joseph Giordano, whereby Gilliams would invest $1,775,000 and Giordano $450,000, with their funds to be held by respondent, in escrow, pending the purchase of a coal mine in Utah.

On November 9, 2009, Giordano wired an initial $50,000 into respondent's escrow account for the transaction.[1]

On December 23, 2009, respondent and Gilliams entered into an escrow agreement with Giordano requiring Gilliams and Giordano to wire their respective investment funds for respondent to hold as "Escrow Agent."[2] If either investor failed to wire his funds, the other would receive the return of his funds within twenty-four hours. Giordano immediately wired $400,000 to respondent's escrow account, but Gilliams never did so.

Instead, for the next six months, through August 2010, respondent and Gilliams misrepresented to Giordano that his money was secure in respondent's escrow account. In fact, they systematically misappropriated all of those funds, using them for their own unrelated, personal and business purposes.

Specifically, between December 23, 2009 and February 18, 2010, respondent wrote escrow account checks and made transfers

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[1] Another investor from California also wired $50,000 into respondent's escrow account on November 9, 2009, but backed out of the venture when Gilliams failed to invest required funds of his own. Respondent returned that investor's funds ten days later, leaving only Giordano's funds at risk thereafter.

[2] This account is alternately referred to in the record as an escrow account maintained by respondent and as his attorney trust account.

against Giordano's escrow funds to the following parties, for matters that were unrelated to the coal mine investment: $5,000 to a Gilliams employee; $5,000 to Gilliams himself; $10,000 to an attorney working for Gilliams on unrelated matters; $30,000 to respondent's law firm; $35,000 to a Gilliams-owned bank account; $5,000 to TL Gilliams, LLC; another $5,000 to a Gilliams employee; and additional $100,000 and $49,900 payments to TL Gilliams, LLC. These disbursements left only $230 of Giordano's funds intact in the account.

At some point, Giordano became anxious about his investment and repeatedly demanded the return of his funds, not knowing that they already had been misappropriated. Respondent repeatedly lied to Giordano, claiming that the funds had remained intact in his escrow account.

At his sentencing hearing, respondent admitted that he had taken a total of "$152,000 over several transactions" from Gilliams' criminal enterprise, at least $100,000 of which came from Giordano's coal mine deposit.[3]

[3] On the final day of trial, during rebuttal, the U.S. Attorney identified respondent's theft as "$112,000 from the $450,000 that Joe Giordano had put in."

II. The Securities Fraud

Counts one and two of the second superseding indictment involved Gilliams' and respondent's second fraudulent scheme, in which they led investors John Taylor and Vasilles Morfopoulos to believe that TL Gilliams, LLC, was involved in the purchase and trading of United States Treasury Strips, a derivative of treasury bonds. In furtherance of that scheme, in June 2010, Gilliams enticed Taylor to invest in the Treasury Strip scheme. On June 27, 2010, Taylor wired $1,000,000 into respondent's attorney trust account. On that same date, respondent entered into an escrow agreement with Gilliams in which respondent acknowledged receipt of the $1,000,000 in his trust account, and that the funds would be used "to purchase Treasury Strips from Wells Fargo/Wachovia Securities and other related projects." Taylor was not a party to that agreement.

Gilliams invested no more than $250,000 of Taylor's funds in Treasury Strips. Instead, respondent, who was well aware that the funds were to be used for Treasury Strips, assisted Gilliams' misappropriation of at least $750,000 of Taylor's funds, for Gilliams' and respondent's own unrelated interests. Respondent wired $325,000 from the trust account to a law firm in Utah, "knowing full well that the payment represented

settlement of a threatened lawsuit against Gilliams for his conduct in connection with a failed bid to purchase coal mining interests in 2009," and $395,000 to TL Gilliams, LLC, the latter of which Gilliams then converted to his own use for personal and business interests, all unrelated to the purchase of Treasury Strips.

According to the superseding indictment, between June 30 and July 15, 2010, respondent transferred a total of $15,000 of Taylor's funds from the trust account to his attorney business account, "at least some portion of which was transferred at Gilliams' direction."

In July 2010, respondent and Gilliams executed a similar escrow agreement in anticipation of respondent's receipt in the trust account of investment funds from the second investor, Morfopoulos, who had agreed to invest $4,000,000 for the purchase and trading of Treasury Strips. Morfopoulos was not a party to that escrow agreement.

On August 24, 2010, Morfopoulos wired $4,000,000 into respondent's trust account for the purchase of the Treasury Strips.

The next day, August 25, 2010, respondent wired $450,000 of Morfopoulos' funds to Giordano, who had threatened legal

action to retrieve his coal mine deposit. Giordano had no involvement in the Treasury Strips scheme, and respondent misrepresented to him that the $450,000 wire represented the return of his original deposit, which he falsely claimed had remained in escrow, since 2009, on account of the coal mine purchase.

During his jury summation, Assistant U.S. Attorney David B. Massey read from a document containing Gilliams' instructions to respondent that day:

> 'Number one, Joe Giordano escrow. $450,000.' Now, why does [respondent] go along with these instructions?
>
> Well, remember, Joe Giordano had hired a lawyer to get his $450,000 back a couple months before. The lawyer threatened -- essentially threatened to report [respondent] to the Pennsylvania Bar for failing to return Giordano's escrow on demand. The lawyer wrote a letter to [respondent], essentially making this threat. Here's the letter.
>
> The lawyer for Mr. Giordano writes in the part that's in bold, 'Your failure to do so...' he's referring to your failure to return escrow money on demand '...will be viewed and treated as not only a breach of the terms of the escrow agreements but in addition as a transgression of the Pennsylvania Rules of Professional Conduct.'
>
> This is one -- this is one of the reasons [respondent] goes along with stealing $450,000 from Morfopoulos to pay back Giordano.
>
> He knows Mr. Giordano is not going away. And he knows that there is no money to pay him back in the escrow account. There's $4.29 left in the escrow account at this point in June.

> There is no money left, of course, until Dr. Morfopoulos' money arrived.
>
> Now [respondent] can follow the instructions and help his client steal $450,000 back and participate in that theft by wiring -- by taking 450 of the four million and wiring it to Joe Giordano to get Joe Giordano's lawyer off his back.
>
> Now, [respondent] also gets something else when he agrees with Mr. Gilliams to disburse Morfopoulos' money pursuant to this document. You see the second item on the list. Elam & Scott. $40,000.
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> [OAEbEx.C,1056-19 to 1057-24.][4]

That same day, August 25, 2010, respondent took at least $40,000 of that money to purchase a used Porsche automobile.[5]

Although respondent appealed the trial court's admission into evidence information concerning his Porsche purchase, the Second Circuit Court of Appeals affirmed the SDNY's ruling, reasoning that the Porsche purchase was relevant because of its "temporal proximity to the receipt of investor funds."

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[4] OAEb refers to the OAE's June 5, 2017 brief in support of the motion for final discipline.

[5] The sentencing judge adopted the factual recitation contained in the sealed pre-sentence report, which states a different figure. However, the predominating figure used elsewhere in the record is $40,000. At the trial, the U.S. Attorney summarized respondent's self-gain thefts as follows: "$10,000 from John Taylor's one million dollars, $40,000 from Dr. Morfopoulos' four-million-dollar investment, the $112,000 from the $450,000 that Joe Giordano had put in."

According to the appellate court,

> the purchase arguably suggested that [respondent] had lied in his letter to [the HEARTT Foundation] when he stated that he would send Gilliams the 'entire amount' of the $4 million received from [HEARTT] 'for purposes of placing into trade,' when in reality, according to the government, [respondent] diverted at least $40,000 of the funds toward the purchase of the car just one day later.
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> [OAEbEx.H4.]

In the months following August 2010, respondent assisted Gilliams in the misappropriation of all but a few hundred dollars of the remaining investor funds in the trust account. Respondent did so by wiring sums, sometimes in large amounts, among them $3,000,000 into Gilliams' new brokerage account at Wells Fargo, and $510,000 to a Citibank account belonging to Gilliams.

Rather than invest Morfopoulos' millions in Treasury Strips, Gilliams used them for his own personal/business purposes, including: (1) more than $1,000,000 as the sponsor and organizer of "Joy to the World," a festival culminating in a December 18, 2010, black-tie gala at the Ritz-Carlton hotel in Philadelphia, Pennsylvania, along with another event in the Bahamas; (2) approximately $1,600,000 on a gold investment in Ghana; (3) $218,000 to purchase a commercial warehouse in

Denver, Colorado; and (4) more than $25,000 to pay his children's private elementary school tuition.

At respondent's August 13, 2013 sentencing before the Honorable Deborah A. Batts, U.S.D.J., his attorney sought probation for respondent, based on character testimony and letters procured from individuals who attested to respondent's otherwise fine character. Respondent also pleaded for leniency, speaking at some length about his accomplishments prior to becoming involved with Gilliams. Respondent claimed to have mistakenly "believed in" Gilliams, said that he "didn't want to be [Gilliams'] business partner," and that he had been impressed by Gilliams, who was "a mover and shaker." Respondent queried, "who wouldn't . . . want to be a part of that. I got it wrong."

Immediately following respondent's remarks, Assistant U.S. Attorney Michael Levy sought to put them in perspective:

> [I]t was clear to the jury and it is clear that the mistake here was not [respondent] trusting Mr. Gilliams. There is no crime involved in trusting your client. It was telling lies on behalf of his client. It was taking money into escrow and lying to the victims, [respondent] lying to the victims about having that money, lying to the victims about having also received Mr. Gilliams' money in order to have the victims keep their money there, lying and creating a letter that Mr. Gilliams could send out saying that [respondent] was holding $3 million on behalf of Mr. Gilliams. It was receiving money

> into escrow for purposes of the treasury strips program and then, at Mr. Gill's [sic] direction, sending it to places that obviously had nothing to do with treasury strips, to pay off other disputes that Mr. Gilliams had, other lawsuits, and taking some of the money [for respondent's] own self. Those are the crimes. And the jury was aware of that. The instructions made that clear. Negligence in trusting your client is not a crime and nobody says it is. But there were crimes committed here and they were clear ones.
>
> It is unfortunate that they were committed by a lawyer. [Respondent] is not in a profession where the customer is always right. There is no such profession. Where the customer tells you to commit a crime on his behalf, it's your obligation to say no. And [respondent] didn't do that here.
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> [OAEbEx.G,17-7 to 18-6.]

Judge Batts sentenced respondent to three, thirty-month terms of imprisonment, one for each count, to be served concurrently; a three-year term of supervised release thereafter; and a $300 special assessment. Respondent also was ordered to pay a total of $915,000 in restitution, with twenty percent of his gross monthly earnings designated for restitution upon his release. Judge Batts said of respondent:

> The defendant stands before the Court to be sentenced on three counts of fraud. The defendant, an attorney, committed these crimes at the behest of his coconspirator and con man client by receiving into and transferring out of his attorney escrow account millions of dollars fraudulently and assuring third parties that the monies either were still in the account or were being used for the purposes for which they

had deposited the monies into his account when in fact they were not. He took some of those monies for his own use as well.

[OAEbEx.G,18-19 to 19-2.]

The OAE, in support of respondent's disbarment for his involvement in the coal mine scheme, stated:

> [R]espondent and his cohort outright stole the investor's money. . . . Using his position and skills as an attorney, respondent facilitated a transaction in which victim Joseph Giordano wired a total of $450,000 into respondent's attorney trust account for the purpose of purchasing a bankrupt coal mine. Respondent and [Gilliams] then stole all of Giordano's $450,000, with respondent taking approximately $100,000 for himself. . . . It does not matter that the $450,000 in entrusted funds were eventually returned to Giordano. Once respondent undertook to act as an escrow agent for investment funds in the purported coal mine venture, he had a fiduciary duty to safeguard those funds. That he did not do.
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> [OAEb8-9.]

In respect of the Treasury Strip scheme, the OAE argued:

> Here . . . respondent was involved in a criminal scheme in which he used his skills and position as an attorney to defraud clients of their investment funds. [Gilliams] arranged for two investors to make a total of $5 million of investments in Treasury Strips by wiring funds into respondent's attorney trust account maintained by respondent's law firm. No . . . investments were made and neither investor received any of their combined $5 million investment back. Respondent acted as an intermediary in the scheme, and provided investors with a false sense of security that they were sending money to a lawyer. Gilliams then directed respondent to wire various amounts

> of the money out of respondent's escrow account for inappropriate and unauthorized purposes, and respondent profited from the offenses, taking approximately $50,000 in total.
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> [OAEb8.]

The OAE did not allege that respondent's actions vis-à-vis the coal mine and Treasury Strip schemes constituted the knowing misappropriation of escrow funds, for which disbarment is invariably warranted. In re Hollendonner, 102 N.J. 21 (1985). Rather, the OAE relied on disbarment cases involving attorneys found guilty of securities fraud conspiracy (In re Bultmeyer, 224 N.J. 145 (2016)), and misprision of a felony (In re Marino, 217 N.J. 351 (2014)).

THE KNOWING MISAPPROPRIATION ISSUE

By letter dated June 30, 2017, through the Office of Board Counsel, we requested that the parties submit briefs addressing respondent's apparent knowing misappropriation of escrow funds, and the applicability of In re Hollendonner, supra, 102 N.J. 21, to this case.

On July 14, 2017, the OAE submitted a letter-brief (OAE1b) in which it agreed with the applicability of Hollendonner, and argued that respondent should be found guilty of knowing misappropriation of escrow funds under Hollendonner, as well as In re Noonan, 102 N.J. 157 (1986). The OAE asserted:

> In Noonan, the Court affirmed that the misappropriation that will trigger automatic disbarment . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking." 102 N.J. at 158. "It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal." Ibid. The "relative moral quality of the act" is "irrelevant." Ibid. The presence of "good character" is "irrelevant." Ibid. The absence of "dishonesty, venality, or immorality" is "irrelevant." Ibid. (citations omitted). Disbarment for misappropriation is "invariable." Ibid.
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> [OAE1b2.]

Also on July 31, 2017, respondent's counsel provided a brief (Rb) in which he argued that respondent had not knowingly misappropriated escrow funds. Rather, he argued, respondent was simply a misguided, novice attorney at the time of these thefts, who had played only "a passive role in the alleged fraud schemes, compared to Gilliams."

Respondent's counsel took issue with the pre-sentence report (but not the OAE's use of it) and the OAE brief in support of the motion for final discipline, claiming that both of those documents contained "broad allegations of theft by Respondent" that had improperly cast respondent and Gilliams "as

a 'single unit,' that stole money, thereby unfairly prejudicing Respondent in this matter."[6] He urged that no evidence had been adduced at trial that respondent "knowingly participated in any of these investment schemes," or that he "knew the investments were bogus, at the time that he accepted deposit of the investment funds into his trust account."

Regarding the Treasury Strips scheme, counsel argued, "the evidence reasonably inferred" that respondent was duped by Gilliams. Prior to 2009, his legal career had been almost solely focused in the area of sports and entertainment law. When he represented Gilliams, respondent had been licensed to practice law for just two years. He was, thus, an inexperienced attorney.[7]

Respondent's counsel also highlighted a November 17, 2009 Trust Agreement between respondent and Gilliams, in which Gilliams, in essence, promised that any funds placed in respondent's trust account were "clean funds," and that no one

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[6] A similar "single unit" prejudice argument by respondent's appellate counsel was rejected by the Second Circuit Court of Appeals.

[7] According to respondent, after graduating from law school in 1994, he spent the next thirteen years as a certified National Football League (NFL) agent, representing players, presumably in contract negotiations with league teams. He also was certified to represent players in other major professional sports. In 2007, he passed the New Jersey bar examination and took a position with a Philadelphia law firm as Chairman of the Sports and Entertainment Law Department, where he was assigned to work with Gilliams, who was a client of that firm.

else had any claim to them. We found that document problematic in that (1) it was not previously a part of our record;[8] (2) it involved funds "being received as fees and income in regard to one or several transactions that will occur over the next several months," a statement that seemingly fails to describe the subject funds of this matter – investor funds for Treasury Strips; and (3) a written trust agreement between respondent and Gilliams would have no bearing on respondent's duty to the investors to disburse the investors' funds only for the purchase of Treasury Strips.

Respondent's counsel argued that respondent had been unaware of Gilliams' criminal conduct in the Treasury Strip scheme because he received the same bogus screenshot of a supposed Treasury Strip purchase that Gilliams had sent to the investors. According to counsel, respondent "was naïve and inexperienced . . . duped and deceived by Gilliams into involvement in Gilliams' fraudulent schemes and treated like a patsy."[9]

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[8] Because that document contains indicia that it was a part of the criminal proceedings below, we permitted its use here.

[9] Respondent's counsel also furnished a written fee agreement between respondent and Gilliams dated November 15, 2009, which also was not a part of our record. Under that agreement, TL Gilliams, LLC agreed to pay respondent's newly formed law firm, Elam & Scott, a $10,000 per month flat fee for "general counsel services to you and your company needs."

In respect of the coal mine scheme, respondent's counsel characterized respondent as having been swayed by Gilliams, who appeared to be a highly successful businessperson. Respondent believed and trusted him because of his success and because Gilliams was also a church pastor. Respondent, on the other hand:

> [w]as an inexperienced attorney, young to the practice of law and 'in over his head,' with respect to the complex million dollars deals at issue and, therefore, more easily manipulated by Gilliams. At the time, Respondent did not fully understand his obligations as an escrow agent. Respondent had complete trust in Gilliams and held a reasonable belief that Gilliams' apparent extreme wealth rendered him capable of performing contract commitments.
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> [Rb11.]

Regarding Giordano's $450,000, counsel stated:

> Gilliams and Respondent also had entered into an [sic] Joint Venture Directive and Release of Claims dated February 3, 2010 with each other. In that agreement, Gilliams represented that he is irrevocably authorized and directed to utilize the $450,000 received in escrow as majority and controlling co-joint venture for Diablo Energy Group, LLC (its successors, Kenwood Global Energy, LLC) for expenses related to the funding of Bear Canyon Mine and other related projects. Exhibit R-14. At all times, Respondent disbursed funds as directed by Gilliams, in accord with the Escrow Directive and Release of Claims agreements between him and Gilliams. Therefore, Respondent, an inexperienced attorney, held a reasonable, albeit erroneous, belief that he could release the $450,000 funds at Gilliams' direction.
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> [Rb12-Rb13.]

Respondent's counsel maintained that "automatic disbarment" under Hollendonner is inapplicable here, because of respondent's inexperience and the trust he had placed in Gilliams. Therefore, he argued, respondent had a reasonable, but erroneous belief that he could disburse the almost $5,000,000 in escrow funds as instructed by Gilliams. Counsel for respondent did not squarely address respondent's having taken $152,000 of investors' funds, without their authorization, for his own use, other than that they were for legal fees that Gilliams owed to him.

Respondent's counsel cited two cases, In re Mueller, 218 N.J. 3 (2014) and In re Ejiogu, 197 N.J. 425 (2009), in support of his argument that a suspension, not respondent's disbarment, is warranted here.

In Mueller, the attorney received a three-year suspension, retroactive to his temporary suspension in New Jersey. After Mueller pleaded guilty to a federal information charging him with conspiracy to commit wire fraud, he received a five-month term of incarceration and two years of probation. He also was ordered to pay $25,500 in restitution. In the Matter of Erik W. Mueller, DRB 13-324 (February 12, 2014) (slip op. at 8).

Mueller conspired and agreed with Allen Weiss, a real estate developer, and other co-conspirators, to defraud a group of physicians/investors who had been lured into investing $1,000,000 to convert existing properties into medical offices.

The doctors were falsely promised returns of between twenty and thirty percent on their investments. Mueller held the investment funds for the project in his trust account. Id. at 3.

Over the course of a year thereafter, Weiss and the co-conspirators had Mueller wire-transfer various amounts of the investors' funds to their bank accounts, after which they used those funds for their own purposes, which were unrelated to the development project. Id. at 4. Only after all of the funds had been depleted, did Weiss and the others persuade Mueller to join in their illegal activities. Id. at 6.

Mueller was not charged with knowing misappropriation, likely because he was unaware, at the time that he transferred funds out of his trust account, that they were going to be used for purposes other than that for which the investors had intended. Rather, after Weiss and the others already had misused the funds, and after investors had begun to question the project and the use of their funds, Weiss, Mueller, and others misrepresented to them that the funds were safe. To entice additional investors to the scheme, Weiss directed Mueller to create a false lien and note, containing names of phony guarantors. In front of a potential investor, Mueller notarized the bogus document, after which the investor parted with $150,000. Id. at 5. Mueller also prepared a letter to another investor, stating that he held $834,000 in his trust account

attributable to the project, when the account held only $164 in project funds. He also faxed a false trust account statement to another investor showing $612,000 in the account, when the actual balance was only $8,900. Ibid.

Mueller was found not to have shared in the profits of Weiss' fraudulent scheme. Rather, he received only his $20,000 legal fee for the representation. Id. at 6.

In In re Ejiogu, supra, 197 N.J. 425, the attorney received a one-year suspension for misconduct in three real estate transactions involving his "paralegal outfit," Gilbert Hart, and Hart's two companies, GSC Investment Group and Barber Management. Ejiogu received settlement proceeds, which he deposited into his trust account, authorized various disbursements to either GSC or Barber, neither of whom were parties or lienholders to the transactions, and then failed to satisfy the sellers' mortgages. Ejiogu certified the truth of the statements made on the HUD-1 settlement statements, which Hart had prepared, knowing that mortgage lenders and others would rely on them. In the Matter of Nedum C. Ejiogu, DRB 08-163 (September 18, 2008) (slip.op. at 3).

Ejiogu had been impressed by Hart's business acumen and apparent financial success, and trusted him implicitly. Hart, on the other hand, took advantage of Ejiogu's lack of knowledge in real estate transactions, taking trust account disbursement

checks designated to pay off mortgages, and cashing them for himself. Id. at 5.

We believed Ejiogu, that he thought Hart was properly completing the real estate transactions. As soon as he learned that Hart was not doing so, he cut ties and "took immediate steps to rectify the problems" Id. at 34.

Finally, although Ejiogu had been charged with knowing misappropriation under Hollendonner, the Court found a lack of clear and convincing evidence that he had "acted with knowledge and deliberation when he entrusted the funds to Hart, that is, that he knew that Hart would convert the funds to his own use." Ibid.

Ejiogu was found guilty of failure to safeguard funds (RPC 1.15(a)), and misrepresentations on the HUD-1s (RPC 4.1(a) and RPC 8.4(c)).

* * *

Following a review of the record, we determined to grant the OAE's motion.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is the extent of discipline to be imposed.

R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; and In re Principato, supra, 139 N.J. at 460. Thus, respondent's criminal conviction in the SDNY on two counts of wire fraud and one count of securities fraud establishes that he has committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b). Moreover, the facts underlying his conviction evidence that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c).

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

In respect of the coal mine scheme, respondent made several disbursements from his escrow account, all of which were unrelated to the coal mine investment: $5,000 to a Gilliams

employee; $5,000 to Gilliams himself; $10,000 to an attorney working for Gilliams on unrelated matters; $30,000 to respondent's law firm for fees; $35,000 to a Gilliams bank account; $5,000 to TL Gilliams, LLC; another $5,000 to a Gilliams employee; and additional $100,000 and $49,900 payments to TL Gilliams, LLC. According to the government, respondent converted $112,000 of those funds – about twenty-five percent of Giordano's total investment – to his own personal use. Respondent's total disbursements virtually depleted Giordano's investment funds. At no time did respondent have Giordano's authorization to use his funds or to disburse them to others for purposes unrelated to the coal mine investment. Indeed, respondent continued to assure Giordano that his money remained secure in his trust/escrow account.

Similarly, in respect of the Treasury Strip scheme, the investors did not authorize Gilliams to use their $5,000,000 for purposes other than the purchase of Treasury Strips.

Specifically, in July 2010, Taylor was the first to invest $1,000,000 in the scheme. Respondent, knowing that the funds were to be used for Treasury Strips, wired $325,000 from the trust account to a law firm in Utah to settle a threatened lawsuit against Gilliams for his conduct in an unrelated matter,

$395,000 to TL Gilliams, LLC, and $15,000 to his attorney business account, to pay himself for Gilliams' legal fees.

In August 2010, Morfopoulos invested $4,000,000 in the Treasury Strip scheme, wiring them into respondent's attorney trust account on August 24, 2010. The very next day, on August 25, 2010, respondent misappropriated $450,000 of those funds and sent them to Giordano to replace the $450,000 previously stolen from him in the coal mine scheme. Respondent knew that the Treasury Strip funds were not to be used for that purpose.

Importantly, at the time, Giordano's attorney had just threatened to report respondent to ethics authorities if he did not immediately return Giordano's escrow funds. We have no doubt about respondent's mens rea at the time – he lied to Giordano as he turned over $450,000 of Morfopoulos' funds to him, with the self-serving misrepresentation that he was returning Giordano's original funds – funds that supposedly had remained intact in the escrow account all along.

That same day, respondent took at least $40,000 of Morfopoulos' funds and treated himself to a Porsche automobile. We find respondent's claim that he did so because Gilliam owed him legal fees without merit. Clearly, in context, respondent

must have known that Morfopoulos never authorized him to use investment funds to pay Gilliams' legal fees.

Over time, respondent also facilitated Gilliams' theft of the remainder of the Treasury Strip funds. He did so by transferring sums from his trust account into accounts belonging to Gilliams, and from which Gilliams converted those remaining funds to his own use. In fact, almost none of the funds were devoted to the investments for which they were intended.

Respondent's only arguably proper disbursement was the $3,000,000 wire transfer into Gilliams' new Wells Fargo brokerage account, seemingly the account from which Gilliams was to purchase Treasury Strips. For that reason, that one transaction escapes our scrutiny as an outright knowing misappropriation.

However, we also conclude that, at its most benign, it was extremely reckless of respondent to relinquish control over that $3,000,000. Indeed, by the time respondent transferred those funds, he was well aware of Gilliams' proclivity to steal from investors to settle unrelated legal matters, and to repay investors such as Giordano, whose funds he and respondent previously had stolen in the coal mine scheme.

To make matters worse, respondent used his status as an attorney to commit these crimes. Specifically, he was TL Gilliams, LLC's corporate counsel. In that capacity, he was so close to the fraud that he was essentially the only person with sufficient knowledge to prevent Gilliams from perpetrating these massive frauds on the unsuspecting investors. Without the imprimatur of an attorney and his attorney trust account, investors likely would have shunned Gilliams. Instead of protecting the escrows, respondent actually participated in Gilliams' frauds. The coal mine and Treasury Strip victims lost millions of dollars, while respondent gave them false assurances in order to conceal the rampant fraud actively taking place in his legal practice.

We now turn to the issue of the appropriate sanction for respondent's serious and criminal conduct. On the one hand, in its letter-brief to the Board, the OAE acknowledged that respondent should be disbarred for the knowing misappropriation of escrow funds placed in his attorney trust account in the Treasury Strips scheme, and in his escrow account in the coal

mine scheme, citing In re Wilson, 81 N.J. 451, 461 (1979) and In re Hollendonner, supra, 102 N.J. 21.[10]

On the other hand, respondent's counsel argues that Hollendonner is inapplicable and that respondent should escape disbarment because he was an inexperienced attorney who was enamored of, and duped by, Gilliams and because he also had a reasonable, but erroneous belief that he could disburse the almost $5,000,000 in escrow funds as instructed by Gilliams.

We reject those arguments. After graduating from law school, respondent spent thirteen years as a certified agent for NFL and other professional sports athletes. It is true that he was just two years into the practice of law when he left a Philadelphia law firm where he had been chairperson of its Sports and Entertainment Law Department, but respondent was not new to the ways of the business world – he was no "babe in the woods" when he left that firm with Gilliams as his client. Indeed, he was savvy enough to negotiate a sizeable monthly retainer with Gilliams. In our view, respondent was no "patsy."

[10] It does not matter that respondent may have held some of the investors' funds in an escrow account other than his attorney trust account. Hollendonner requires only that they be escrow funds.

Rather, he was an enabler at best, and an actual perpetrator, at worst.

Counsel for respondent sought a three-year, retroactive suspension for respondent, citing In re Mueller, supra, 218 N.J. 3 and In re Ejiogu, supra, 197 N.J. 425. We find those cases distinguishable, for the following reasons.

In Mueller, the attorney received a three-year, retroactive suspension, after a conviction for conspiracy to commit wire fraud. However, as noted, it was not until after all of the investors' funds had been depleted, that Weiss and his co-conspirators "persuaded [Mueller] to join in their illegal activities." Id. at 6. Mueller was not charged with misusing escrow funds or profiting from Weiss' fraudulent scheme, having received only his legal fee for the representation. Ibid.

Here, respondent himself benefitted from the misappropriations beyond mere receipt of legal fees. Specifically, he used investor funds to purchase a Porsche automobile.

In In re Ejiogu, supra, 197 N.J. 425, the attorney received a one-year suspension for misconduct in three real estate transactions involving his "paralegal outfit," Hart, GSC and Barber. Ejiogu placed settlement proceeds in his trust account

and disbursed funds to either Hart or his companies to extinguish mortgage debt, but Hart failed to satisfy the sellers' mortgages. Instead, he cashed the checks and kept the money for himself. In the Matter of Nedum C. Ejiogu, DRB 08-163 (September 18, 2008) (slip.op. at 3).

Like respondent, Ejiogu had been impressed by Hart's business acumen and apparent financial success. Ejiogu trusted Hart implicitly. Hart used that sense of trust to steal settlement funds for himself. Id. at 5.

Unlike respondent, Ejiogu was not charged with any crimes for his misconduct. Moreover, both the Court and this Board believed Ejiogu that he thought Hart was properly completing the three real estate transactions in question. Unlike respondent, as soon as Ejiogu learned that Hart had not been satisfying the mortgages, he severed ties with Hart and "took immediate steps to rectify the problems" Id. at 34.

Unlike Ejiogu, who did not convert trust account or escrow funds to his own use, respondent converted $152,000 of investors' funds that he held in escrow, to his own use, and improperly disbursed millions of dollars of investor funds to Gilliams, aware that he did not have the investors' authority to do so, and of Gilliams' propensity to misuse investor funds.

We reject as irrelevant respondent's argument that, when respondent took the escrow funds, he was unaware that he needed more than Gilliams' approval – that he was required to obtain authorization from all parties to the escrow arrangement – the coal mine and Treasury Strip investors.

In In re Gifis, 156 N.J. 323 (1998), the attorney was disbarred after misusing escrow funds in three matters, one of them a residential real estate transaction. In that matter, a random audit revealed that he had taken the buyers' $51,000 deposit prior to settlement and, with the seller's consent to use the funds as a loan, but with no consent from the buyers, converted the deposit to his own use. He replaced the funds prior to settlement, so that the transaction was fully funded at closing. Id. at 328.

During the disciplinary proceedings, Gifis claimed an honest, yet mistaken belief that the consent of the buyers was not necessary, because the transaction was a "cash deal" and the deposit was non-refundable. He also claimed to have been ignorant of the Court's 1985 decision in Hollendonner, supra, "that the unauthorized use of escrow funds is akin to the unauthorized use of client trust funds, warranting disbarment under *In re Wilson*, 81 *N.J.* 451, 409." Id. at 330.

That Gifis was unaware of the Court's decision did not hold sway with us or with the Court, for ignorance of the law does not diminish an attorney's responsibility for an ethics violation. In re Eisenberg, 75 N.J. 454 (1978). In Gifis, we rejected those arguments and recommended his disbarment – the Court agreed. We reject that argument here.

For these reasons, under In re Wilson, supra, 81 N.J. 451, 461 and In re Hollendonner, supra, 102 N.J. 21, we determine that respondent must be disbarred and so recommend to the Court.

Members Clark and Hoberman did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Everette L. Scott, Jr.
Docket No. DRB 17-203

Argued: September 14, 2017

Decided: December 28, 2017

Disposition: Disbar

Members	Disbar	Did not participate
Frost	X	
Baugh	X	
Boyer	X	
Clark		X
Gallipoli	X	
Hoberman		X
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2

By: Paula Dow
Ellen A. Brodsky
Chief Counsel